

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 5091 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO
1 to 5 : No

GHANSHYAMBHAI MADHAVBHAI PATEL

Versus

BHUPENDRASINH C RAHEVAR

Appearance:

MR BG JANI for appellant

NOTICE NOT RECD BACK for Respondent No. 1

MS AVANI S MEHTA for Respondent No. 2

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 09/08/1999

ORAL JUDGEMENT

1. Appellant, who is the original claimant - a victim of a vehicular accident, has filed this appeal for enhancement of compensation under Section 173 of the Motor Vehicles Act, 1988, challenging the judgment and award dated March 31, 1998 rendered by the Motor Accidents Claims Tribunal No.III (Aux.) Ahmedabad, in

M.A. C. Petition No.618 of 1988.

2. On January 14, 1988 at about 6 p.m. when the appellant was riding a bi-cycle near Khokhra physical ground, the jeep-car bearing R.T.O. Registration No.9712 dashd with the bi-cycle of the appellant as a result of which the the appellant sustained fracture of tibia and was admitted in the L.G. Hospital where he was treated as indoor patient from 14.1.1998 to 25.1.1998. In the said vehicular accident, his three teeth were also broken and he had sustained injuries on intestine and a fracture on the left knee. Due to the accidental injuries, he could not attend his avocation in Ahmedabad New Textile Mill and, even after the discharge, the appellant had to attend the hospital for follow-up treatment. According to the appellant, he was earning Rs.1200/- per month out of his job as machine-man. The appellant filed M.A.C. Petition No.618 of 1988 before the Motor Accident Claims Tribunal, Ahmedabad, claiming compensation of Rs.1 lakh for the accidental injuries sustained by him in the vehicular accident which took place on January 14, 1988.

3. The application was opposed by the respondents by filing their reply, inter alia, contending that the appellant himself was negligent and the amount claimed by the appellant was excessive and the application be dismissed with costs.

4. The appellant led oral as well as documentary evidence in support of his claim before the Tribunal. He also produced disability certificate, which showed that he had sustained permanent partial disability of 15%. The Tribunal, on over all oral as well as documentary appreciation, awarded Rs.65,100/- as compensation to the appellant to be recovered from the respondents with 15% interest and proportionate costs, which has given rise to filing of this appeal by the appellant.

5. Heard the learned advocates for the appellant and the respondents.

6. The amount of compensation awarded by the Tribunal under the heads of pain, shock and suffering, medicine, special diet, transportation charges, actual loss of income, expenditure incurred by the attendant and gratuity service rendered by the attendant, does not call for any interference by this Court, as the same is just and proper. However, learned advocate for the appellant has vehemently submitted that, at the time of the accident, the appellant was aged 32 years and the Tribunal erred in not applying proper multiplier in

assessing future loss of income. Learned advocate for the respondent vehemently submitted that, since just and adequate compensation has been awarded to the appellant, no interference is called for by this Court in this appeal and, therefore, the appeal be dismissed.

7. Admittedly, at the time of the accident, the appellant was aged 32 years and was serving as machine-man in the Ahmedabad New Textile Mill. Considering the age of the appellant, his avocation, and the disability suffered by him, in my view, the Tribunal ought to have applied multiplier of 12 instead of multiplier of 9. If the multiplier of 12 is applied to the datum figure of Rs.3600/-, the appellant would be entitled to Rs.43200/- under the head of future loss of income. The Tribunal has awarded Rs.32400/- under the said head and, hence, the appellant is entitled to receive additional amount of compensation of Rs.10,800/{Rs.3600 x 12 =Rs.43200 Less Rs.32400 =Rs.10,800/-} under the head of future loss of income.

8. For the foregoing reasons, this appeal is partly allowed. The appellant is entitled to additional compensation of Rs.10,800/- under the head of future loss of income with running interest at the rate of 12% per annum from the date of application till realisation to be recovered from the respondents jointly and severally. The respondents are directed to deposit the additional amount of compensation of Rs.10,800/- with 12% interest from the date of application till realisation within four weeks from the date of receipt of this order. The judgment and award dated March 31, 1998 of the Motor Accidents Claims Tribunal No.III (Aux.) Ahmedabad, in M.A. C. Petition No.618 of 1988, is modified to the above extent. There shall be no order as to costs. Direct service is permitted.

(swamy)